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ABSTRACT

This paper consists of preliminary notes for a lecture on the commonalities between the history of constitution-making in the Republic of Mexico and the United States. The paper discusses the first Mexican Constitution of 1824 and notes that Mexico has had many different constitutions. It also notes that, despite the U.S. and Mexican shared political legacy, the conditions and cultural milieu that produced each country's constitution were dramatically different. The paper considers these different conditions and finds that the two documents establish similar governmental structures that function in different ways. It concludes that two traditions could hardly be more different; two political systems would seldom be so dissimilar, yet they share much. (BT)

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The Mexican Constitution: A Comparative View

Preliminary Notes for a Lecture

Orson Cook

There are many commonalities between the history of constitution-making in the Republic of Mexico and that of the United States. Although it is an exaggeration to argue that the constitution of one was modeled consciously on that of the other, it is clear that many themes and structural devices are common to the governing documents of each country.

The first Mexican Constitution of 1824--the one so admired by many Anglos in the Texas Revolution of the 1830s—for example, contained the devotion to federalism that appeared first in the American Articles of Confederation in the 1780s and again in a stronger form in the 1787 Constitution of the United States, even though as much of the influence for its writing is traceable to European liberalism as it is to American constitutionalism. Unlike the American tradition of continuity and persistence, however, the Mexican Republic has had many different constitutions (the most obvious examples are those of 1824, 1835, 1836, 1856 --amended in 1857—and, most recently, in 1917. Even in the current Mexican Constitution (1917) similarities abound. It retains the familiar federal structure--to the point of having thirty-one states and a Federal District--and contains an obvious adherence to the familiar principle of separation of powers between three centers of national authority: the legislature, the executive, and the judiciary. Civil liberties are guaranteed—though not in a discreet bill of rights--and since an amendment in the 1950s that enfranchised women, suffrage is universal. There

are also the predictable proscriptions against certain government actions like the granting of titles of nobility and the enactment of *ex post facto* laws. Finally, in comparative terms, the Mexican Constitution provides for a presidential system where the chief executive is both head of state and head of government. In short, there is much here that is politically familiar to most Americans. But somehow, these structural and philosophical similarities are overwhelmed by substantial differences in the constitutional bases of the two nations. Despite their shared political legacy, the conditions and cultural milieu that produced both constitutions were dramatically different.

The American Constitution was clearly the product of eighteenth century enlightenment minds sprinkled with generous doses of English whiggery and suspicious Calvinism. It bore the clear and direct imprint of a group of founding elites who feared the masses and democracy only slightly less than the potential of governmental tyranny. These Founding Fathers had a limited view of the functions of government and were thoroughly imbued with the Lockean principles of natural rights and the sanctity of private property. When they thought of good government, they envisioned one that seldom intruded into the lives of its citizens and infrequently meddled in the free market world of Adam Smith. The Constitution of the United States thus is remarkable for its insistence on balance, order, and symmetry and distinguished in part by its preoccupation with procedural structures. Pursuant to its Spartan vision of political activism, this founding document was relatively brief and disciplined, and its history since the eighteenth century has been one of impressive stability and rare modification. In short, the American founding document is remarkable for its assumption that political and social change is not the province of formal government, but rather that of individual

action. Moreover, as the historian Daniel Boorstin put it more than a generation ago, there was a kind of "giveness" about the American political system that convinced the majority that the Constitution had raised and answered all pressing political issues forever. For most Americans, their Constitution—like the Ten Commandments--became timeless, remote, and unchangeable. It has remained so.

The cultural and political climate that produced the Mexican Constitution of 1917 was dramatically different. In fact, there is nothing in American history to compare with the uncertainty and chaos—not even the Civil War--of the Mexican Revolution of 1910-1917. More than a million died in the revolutionary violence of those seven years and another million fled to the country—most to the United States. What began as a democratic and political movement against the autocratic Porfirio Diaz regime in 1910 quickly developed into a full-scale social revolution and class warfare between a traditional peasantry and emerging working class on the one hand, and a capitalistic landowning—and largely international—elite on the other. By 1917 a succession of regional *caudillos* had tried and failed to rule the country, giving way in the final months of the conflict to the more stable, but questionably legitimate administration of Venustriano Carranza. In many ways, the Constitution of 1917 was an attempt to end the violence and instability by appeasing the unrest among both urban workers and rural *campesinos*, and, at the same time, providing a more stable political environment for political elites. In fact, there is a good deal of evidence that Carranza and his Constitutionalists followers had less than a steadfast devotion to revolutionary change. But clearly, a compelling concern, even to some of the Constitutionalists was to satisfy the social and economic demands of an oppressed class for a more equitable Mexican

society. The new Constitution would place the Mexican national government in the business of insuring social justice, not in the maintenance of the *status quo*; little wonder that Americans regarded this Constitution with skepticism and fear in 1917. Many still do.

A good case in point is Article 3 that provides for education as a function of the federal republic. Primary education is to be free, secular, and compulsory. Furthermore, the education "shall be designed to develop harmoniously all the facilities of the human being and shall foster in him at the same time a love of country and a consciousness of international solidarity, in independence and justice." Perhaps more illustrative of this theme of social justice is Article 123 that insures equitable treatment of workers, including agricultural workers. Among the principles of equity covered are provisions for the eight-hour day, minimum wage, collective bargaining, workplace safety, medical care, employee housing, and unemployment insurance. Not content to merely protect workers rights, the authors of the Constitution were mindful of the vast economic potential of energy resources that they sought to preserve from private exploitation. Article 27 of Title I nationalized these resources by stating: "in the Nation is vested the direct ownership of all natural resources of the continental shelf, [including] solid mineral fuels, petroleum and all solid, liquid, and gaseous hydrocarbons." Similarly, Article 27 also pointed out that private ownership of real estate was not sacrosanct: "the Nation shall at all times have the right to impose on private property such limitations as public interest may demand. . . ." Finally, Article 27 also gave legitimate legal status to peasant villages (*municipio libre*) including surrounding communal lands. Obviously the Constitution had enshrined—at least in a rhetorical sense—many of the goals of the 1910

Revolution. This attempt to fulfill the social welfare goals of the Revolution may also account for the document's great length—roughly four times the size of its U.S. counterpart—and the hundreds of modifications and amendments which have been added in the seventy-five years since its writing (which contrast sharply with the U.S. Constitution's paltry twenty-seven amendments). Capturing the true meaning of the Mexican Revolution in a single document has been a difficult and elusive task indeed.

In fact, under close scrutiny even the structural similarities alluded to above begin to dissolve. The Mexican presidential system, although nominally like that of the United States in that the presidents of both countries are both head of state and head of government, is a significant departure from that of their northern neighbors. A single six-year directly elected term is only the most obvious difference. Thanks to a series of changes, both constitutional and extra-constitutional, over the last seventy-five years, the office of president has emerged as the dominant force in Mexican national political life. His appointment power is near absolute, and his control of the bureaucracy through a system of patronage remains impressive. Many scholars have attributed this development to the Mexican historical and cultural legacy of authoritarian rule, but the facts are that presidential authority is also traceable to the party politics—particularly the rise of the Institutional Revolutionary Party (PRI)--of the twentieth century too. In any case, the rise of presidential power has sharply diminished the influence of the National Assembly and the courts in Mexican government. To be sure, there are important changes afoot in contemporary politics—not the least of which is the appearance of a genuine opposition party—the PAN (National Action Party) and some important electoral reforms, but most

experts believe that Mexico will languish under the mantle of an imperial presidency for some time to come.

In summary, there is no question but that the Mexican Constitution and that of the United States have some commonalities and doubtless are partially descended from a common pool of intellectual and historical antecedents. Yet appearances are deceiving; these two documents come from widely divergent cultural and social backgrounds, and they establish similar governmental structures that function in different ways. One (the U.S.) was the product of a pre-industrial, agrarian, yet highly individualized society, while the other (Mexico) was an outgrowth of an industrializing, peasant, even communal culture caught in the throes of a global marketplace. Two traditions could hardly be more different; two political systems would seldom be so dissimilar, yet they share so much.

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